

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

CIRBA INC. (d/b/a DENSIFY)
and CIRBA IP, INC.,

Plaintiffs,

v.

VMWARE, INC.,

Defendant.

C.A. No. 19-742-LPS

PUBLIC VERSION

**LETTER TO THE HONORABLE LEONARD P. STARK FROM ANNE SHEA GAZA
REQUESTING A DISCOVERY TELECONFERENCE**

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August 20, 2020

BY E-FILE

The Honorable Leonard P. Stark
United States District Court
for the District of Delaware
844 North King Street
Wilmington, DE 19801

Re: Cirba Inc. (d/b/a Densify), et al. v. VMware, Inc., C.A. No. 19-742-LPS

Dear Chief Judge Stark:

Counterclaim Plaintiff VMware, Inc. writes to request the scheduling of a discovery teleconference. In view of the long lapse of time since VMware first raised these issues in late June and Cirba's continued refusal to present them to the Court for resolution (as set forth below), VMware has been forced to submit this letter unilaterally.

The disputes requiring judicial attention are listed below:

- The adequacy of Cirba's core technical document production, in particular whether Cirba has produced its non-public technical documents that bridge the gap between Cirba's publicly available technical documents and its source code and that explain how the accused product is designed and works;
- Whether the Court should order Cirba to supplement its responses to VMware's Interrogatory Nos. 2 and 3 to provide complete responses; and
- Whether the Court should order Cirba to search for and produce documents responsive to VMware's Requests for Production Nos. 19, 48, 68, 69, 86, and 90 that are dated more than six years before VMware filed its counterclaims.

VMware raised the above issues, among other issues with Cirba's discovery responses, in a letter to Cirba on June 30. (Ex. 1.) Since that time, and after multiple letters and meet-and-confers, the parties have reached an impasse as to these issues. (Ex. 2.) In particular, the following attorneys, including at least one Delaware Counsel and at least one Lead Counsel per party,

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participated in verbal meet-and-confers (by telephone) on July 17 and 20 and August 17, 2020 to address these issues:

Delaware Counsel: Anne Shea Gaza and/or Robert M. Vrana
(on behalf of VMware)
Kenneth L. Dorsney (on behalf of Cirba)

Lead Counsel: Lily Li (on behalf of VMware)
Wesley L. White (on behalf of Cirba)

Since August 6, VMware has repeatedly sought Cirba's agreement to the filing of a joint letter so that these issues could be submitted to the Court for timely resolution given the upcoming discovery deadlines. (Ex. 3.) Cirba declined to authorize the joint filing, arguing that VMware's courtesy agreement to extend the substantial completion deadline somehow rendered them not ripe. (*Id.*)

While continuing to hold up the submission of VMware's disputes to the Court, on the afternoon of Sunday, August 16, Cirba demanded for the first time a meet and confer on certain alleged VMware discovery deficiencies. Although the parties have long been at an impasse on VMware's issues, Cirba suddenly refused to agree to any joint letter unless it also included the issues Cirba raised that the parties just began discussing to try and resolve. (Exs. 4, 5.) After VMware agreed to submit a joint letter with those issues despite their lack of ripeness, Cirba changed its mind and refused to agree to submit the joint letter on August 19. (Exs. 5-7.)

Fact discovery will close in less than four months. (D.I. 578 at ¶ 8(a).) VMware has already agreed to extend the substantial completion deadline to September 11 due to Cirba's delays with its document production. (Ex. 8.) Yet Cirba continues to impede resolution of VMware's long-pending issues despite the parties' clear impasse.

VMware requests a teleconference at the Court's earliest convenience, particularly in view of the September 11, 2020 deadline for substantial completion of document production.

Should Your Honor have any questions or concerns regarding the foregoing, counsel for VMware is available at the convenience of the Court.

Respectfully submitted,

/s/ Anne Shea Gaza

Anne Shea Gaza (No. 4093)

Enclosures

cc: All Counsel of Record (CM/ECF & e-mail)